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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

MARK ANTHONY WILLIAMS,

Defendant and Appellant.

F072059

(Fresno Super. Ct. No. F14906245)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. Don Penner, Judge.

C. Athena Roussos, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Eric L. Christoffersen and Nicholas M. Fogg, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Levy, Acting P.J., Poochigian, J. and Detjen, J.

Appellant Mark Williams pled no contest to possession for sale of heroin (count 2, Health & Saf. Code, § 11351)¹ and admitted a prior conviction enhancement (§ 11370.2, subd. (a)). On appeal, Williams contends the court erred when it denied his motion to suppress. We affirm.

FACTS

On February 6, 2014, police officers conducting a probation search at an apartment complex in Fresno detained Williams after Williams pulled into the driveway and a record check disclosed that his driver's license was suspended. Williams was arrested after a search of his car yielded a plastic bag containing three grams of heroin, a digital scale, a bag of small plastic balloons and three small Ziploc bags.

On April 30, 2015, the district attorney filed an information charging Williams with transportation of a controlled substance (count 1, § 11352, subd. (a)), possession for sale of heroin (count 2, § 11351), driving while his driving privilege was suspended (Veh. Code, § 14601.1, subd. (a)), a misdemeanor, driving without a valid driver's license (Veh. Code, § 12500, subd. (a)), three prior conviction enhancements (§ 11370.2, subd. (a)) and four prior prison term enhancements (Pen. Code, § 667.5, subd. (b)).

On May 7, 2015, Williams filed a motion to suppress.

On June 18, 2015, at a hearing on the motion, Fresno Police Officer Paul Darasua testified that on February 6, 2014, at approximately 7:30 p.m., he and three other officers from the Violent Crime Impact Team went to an apartment complex looking for criminal activity and to conduct a probation search of Trion Hunt. The apartment complex was located in an area with a high level of individuals looking for drugs and drug sales. It had an entry driveway that was shaped like a horseshoe, with four individually addressed units on the left and right side, and it was dark in the general area where Hunt's apartment was located because there was no lighting inside the complex.

¹ All statutory references are to the Health and Safety Code unless otherwise noted.

The officers initially stood in the shadow of the porch of a neighbor's apartment to see if there was any pedestrian traffic going to Hunt's apartment. Officer Darasua soon saw Williams drive up in a car and park with his passenger Virginia Smith. Williams walked up to Hunt's apartment and Officer Darasua illuminated him with a flashlight. Officer Darasua was familiar with Williams because during the preceding year he had served or assisted in serving two search warrants for narcotics sales on Williams. Officer Darasua ran a record check and determined that Williams's license was suspended and that Smith had active felony warrants. He arrested Smith and requested a traffic officer to impound Williams's car.

Within five minutes of Williams's arrival at the apartment complex, Lisa Lamb walked onto the scene and Officer Darasua spoke to her in front of Hunt's apartment.² Two other people also arrived at the apartment, one on foot and the other on a bicycle. Officer Darasua asked each of them why they were at the apartment complex and they said either that they were there to see somebody in a different unit or that they were at the wrong complex. Lamb said she was at the wrong apartment complex. According to Officer Darasua, the traffic of individuals coming onto the scene was consistent with an area known for drug sales.

Within a few minutes of Lamb leaving, Hunt came out of his apartment. Officer Darasua told Hunt that he was there to conduct a probation search. He also asked Hunt if he knew why Williams was there. Hunt replied that Williams was there to deliver drugs to Lisa Lamb, even though Officer Darasua had not mentioned Lamb's name to Hunt. Officer Darasua asked Hunt where the drugs were stored and Hunt replied that they were usually in a hide-a-key on the car somewhere. Before the traffic officer arrived, other officers searched Williams's car but did not find any drugs. Officer Darasua then searched under the hood and found a black plastic container that contained drugs.

² Hunt's apartment had windows in front.

Officer Darasua had never used Hunt as an informant before and he did not give him money or any other consideration for the information he provided. Although the officers did not arrest Hunt for some hypodermic needles they found during a search of his apartment, the failure to arrest him was due to an exercise of discretion by Officer Darasua and not consideration for this information.

After hearing arguments, the court deferred ruling on the motion until the following day to allow the parties to brief an issue. On June 19, 2015, in denying the motion the court found that although Hunt was not a citizen informant, his statement that Williams had drugs in his car was corroborated by the following circumstances: (1) the apartment complex was located in a high narcotics trafficking area; (2) Officer Darasua witnessed pedestrian traffic consistent with drug trafficking at Hunt's apartment; (3) Hunt's statement was a statement against interest, in that it could subject him to criminal liability for aiding and abetting a drug transaction and it could violate his probation; (4) there was no evidence Hunt knew Lamb's name or that she arrived at his apartment; (5) Lamb gave an apparently pretextual reason for being there; and (6) the specificity of the information provided by Hunt.

After a break, Williams pled no contest to possession for sale of heroin and admitted a prior conviction enhancement in exchange for a stipulated five-year term and the dismissal of the remaining counts in the instant case and an unrelated misdemeanor case.

On July 22, 2015, the court sentenced Williams to a five-year term split into three years four months in local custody and one year eight months on mandatory supervision.

DISCUSSION

Williams contends Hunt's statements were insufficient to provide probable cause to search his car because Hunt was a criminal informant and there was insufficient corroboration of his tip or any showing regarding the basis of his knowledge. Williams further contends that even if there was probable cause to search his car, the automobile

exception which allows for a warrantless search of an automobile if probable cause to search exists, should not apply because his car was going to be impounded. We reject these contentions.

Legal Principles

“The standard of appellate review of a trial court’s ruling on a motion to suppress is well established. We defer to the trial court’s factual findings, express or implied, where supported by substantial evidence. In determining whether, on the facts so found, the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment.” (*People v. Glaser* (1995) 11 Cal.4th 354, 362.) “Our review is confined to the correctness or incorrectness of the trial court’s ruling, not the reasons for its ruling.” (*People v. Dimitrov* (1995) 33 Cal.App.4th 18, 27.)

“[A] warrantless search of an automobile is permissible so long as the police have probable cause to believe the car contains evidence or contraband.” (*Robey v. Superior Court* (2013) 56 Cal.4th 1218, 1225.) “A police officer has probable cause to conduct a search when ‘the facts available to [him] would “warrant a [person] of reasonable caution in the belief” ’ that contraband or evidence of a crime is present.” (*Florida v. Harris* (2013) 133 S.Ct. 1050, 1055-1056.)

“In *Illinois v. Gates* (1983) 462 U.S. 213, (*Gates*), the high court ... embraced a ‘totality of the circumstances’ approach [for determining probable cause] under which ‘[t]he task of [the person determining probable cause] is simply to make a practical, commonsense decision whether, given all the circumstances ... before [the person making the determination], including the “veracity” and “basis of knowledge” of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place.’ [Citation.]

“The court observed that ‘probable cause is a fluid concept—turning on the assessment of probabilities in particular factual contexts—not readily, or even usefully, reduced to a neat set of legal rules.’ [Citation.] And yet, the court noted, there are

established guidelines for determining the existence of probable cause: ‘Our decisions applying the totality-of-the-circumstances analysis ... have consistently recognized the value of corroboration of details of an informant’s tip by independent police work [Reliance] on hearsay “is not to be deemed insufficient on that score, so long as a substantial basis for crediting the hearsay is presented.’ [Citation.] The court explained that the factors set out in its prior cases—i.e., ‘an informant’s “veracity,” “reliability,” and “basis of knowledge” ’—are ‘all highly relevant’ factors that, together or separately, ‘usefully illuminate the commonsense, practical question whether there is “probable cause” to believe that contraband or evidence is located in a particular place.’ The court further explained that ‘a deficiency in one [of these factors] may be compensated for, in determining the overall reliability of a tip, by a strong showing as to the other, or by some other indicia of reliability.’ ” (*People v. Camarella* (1991) 54 Cal.3d 592, 600-601.)

“ ‘Because unverified information from an untested or unreliable informant is ordinarily unreliable, it does not establish probable cause unless it is “corroborated in essential respects by other facts, sources or circumstances.” [Citations.] For corroboration to be adequate, it must pertain to the alleged criminal activity; ... [T]he corroboration is sufficient if police investigation has uncovered probative indications of criminal activity along the lines suggested by the informant.’ ” (*People v. Gotfried* (2003) 107 Cal.App.4th 254, 263-264.)

The Officers had Probable Cause to Search Williams’s Car

Hunt was an untested informant who had not previously provided Officer Darasua with information. Thus, in order to provide probable cause to search Williams’s car, his statement that Williams was carrying drugs in his car had to be corroborated.

Reliability concerns can be assuaged by facts tending to show the credibility of either the informant or the information provided (or both). Veracity may be established by an admission against penal interest or independent police corroboration. (*United States v. Angulo-Lopez* (9th Cir.1986) 791 F.2d 1394, 1397.) It may also be established where

the informant exposed himself to potential liability for falsely reporting a crime.

(*People v. Kershaw* (1983) 147 Cal.App.3d 750, 756 (*Kershaw*).)

“An attempt to commit a crime consists of two elements: a specific intent to commit the crime, and a direct but ineffectual act done toward its commission.” (Pen. Code, § 21a.) Further, “[s]omeone *aids and abets* a crime if he or she knows of the perpetrator’s unlawful purpose and he or she specifically intends to, and does in fact, aid, facilitate, promote, encourage, or instigate the perpetrator’s commission of that crime.” (CALCRIM No. 401.)

Based on Officer Darasua’s testimony and the drugs found in Williams’s car the court could reasonably conclude that Williams committed a direct but ineffectual act toward the commission of the crime of selling or furnishing heroin to Lamb (§ 11352). The court could also reasonably conclude that Hunt aided and abetted Williams in his attempted commission of either of these offenses because his statements to Officer Darasua showed he was aware of Williams’s unlawful purpose and that he had agreed to provide a private place for the transaction to occur. By a parity of reasoning, the court could also conclude that Hunt also aided and abetted Lamb’s attempted possession of the heroin Williams was going to provide her. In either case, Hunt’s statement that Williams was there to deliver drugs to Lamb exposed him to criminal liability as an aider and abettor to a drug transaction.

Hunt’s statement also exposed him to criminal liability for making a false report of criminal activity if his allegation that Williams went to his apartment to deliver drugs to Lamb was false (Pen. Code, § 148.5) and for delaying and/or obstructing a police officer (Pen. Code, § 148). The court could also reasonably conclude that Hunt had a motive to be truthful with Officer Darasua in order to curry favor with him because Officer Darasua was there to conduct a probation search of Hunt’s apartment. Further, since Hunt provided the tip to Officer Darasua in person, his risk of accountability for providing a false report was absolute, thus strengthening his reliability. (*People v. Jordan* (2004) 121

Cal.App.4th 544, 561 citing *Florida v. J.L.* (2000) 529 U.S. 266, 275 [“As anonymity decreases and the informant’s risk of accountability increases, the inference that the tip is reliable strengthens.”].) It also allowed Officer Darasua to observe Hunt and judge his demeanor and credibility. (*People v. Coulombe* (2000) 86 Cal.App.4th 52, 58.)

Additionally, Hunt told Officer Darasua that Williams intended to deliver drugs to Lamb after Lamb had been outside the apartment and left. However, Hunt was not outside his apartment while Lamb was detained, it was dark outside, and there was no evidence presented that Hunt was aware Lamb had been detained and released prior to Hunt walking out of his apartment. Thus, his statement that Williams was there to deliver drugs to Lamb was corroborated by his knowledge that Lamb would be arriving at his apartment that evening and this further increased the reliability of his assertion that Williams had drugs in his car. (Cf. *Alabama v. White* (1990) 496 U.S. 325, 332 [anonymous caller’s ability to predict defendant’s future behavior demonstrated inside information that made it reasonable to believe that caller also had access to reliable information about defendant’s illegal activities].)

Further, the area where Williams was detained was an area of high sales of narcotics. (*People v. Nonnette* (1990) 221 Cal.App.3d 659, 668 [“The fact that a detention occurs in a high crime area may contribute to probable cause if it is relevant to the officer’s belief that the suspect is involved in criminal activity.”].) And during the short time the officers were outside of Hunt’s apartment, five people arrived—Williams, Taylor, Lamb, and two unidentified individuals, three of whom provided dubious explanations for being there. Thus, the suspicious foot traffic to Hunt’s apartment further corroborated Hunt’s assertion that Williams was there to deliver drugs. (*Kershaw, supra*, (1983) 147 Cal.App.3d at pp. 759-560 [suspicious foot traffic in and out of residence contributed to finding of probable cause].)

Moreover, within the previous year Officer Darasua had been involved in serving Williams with search warrants for narcotics sales. (Cf. *People v. Guajardo* (1994) 23

Cal.App.4th 1738, 1742 [in determining probable cause for arrest, may consider many circumstances including the officer's prior contacts with the defendant].)

Williams contends that Hunt's tip did not provide probable cause to search his car because there was no showing of the basis of Hunt's knowledge and Hunt's statements were not self-verifying. However, an informant's basis of knowledge is only one relevant consideration and a deficiency in this circumstance may be compensated for by a strong showing in an informant's veracity or reliability. (*Illinois v. Gates* (1983) 462 U.S. 213, 233.) Here, the deficiency in Hunt's basis of knowledge was compensated for by the reliability of his tip which was established by the potential criminal liability attached to it and the corroborating circumstances discussed above.

Williams also attempts to show there was insufficient corroboration of Hunt's statements by individually analyzing and discounting each of the corroborating circumstances discussed above. He contends it is reasonable to infer Hunt was inside his apartment and saw and/or heard Lamb when she was outside his apartment because there were windows in front of the apartment and Lamb and the officer were right outside. However, as noted earlier, it was dark in front Hunt's apartment because the complex did not have any outdoor lights. Further, Hunt did not come out of his apartment until after Lamb had left, there was no evidence Hunt was aware officers were outside his apartment or that he looked outside while Lamb was there. There was also no evidence Hunt was acquainted with Lamb and Officer Darasua did not mention Lamb's name to Hunt before Hunt told him that Williams was there to deliver drugs to Lamb. Thus, we are bound by the trial court's implicit findings that Hunt did not know Lamb's name and that Hunt did not know Lamb had been outside his apartment, because this finding is supported by substantial evidence.

Williams also discounts the significance of the pedestrian traffic because it could have been entirely innocent and he contends that the location of Hunt's apartment, in a high narcotics sales area by itself, is insufficient to corroborate Hunt's statements because

it is a factor wholly outside of his control. But, the “possibility of an innocent explanation” did not preclude the officers from considering whether this circumstance corroborated Hunt’s statement and from considering it in determining whether probable cause existed to search Williams’s car. (Cf. *People v. Kershaw*, *supra*, 147 Cal.App.3d at pp.750, 759-760.) Further, although these last two factors, individually or together, may have been insufficient to establish probable cause, nevertheless, they were relevant in making this determination and added to the reliability of Hunt’s statements.

Williams also cites *People v. Campa* (1984) 36 Cal.3d 870 for the proposition that a statement against penal interests is not indicative of reliability when the declarant seeks to exculpate himself by implicating someone else in criminal activity. (*Id.* at p. 882.) *Campa*, however, is inapposite because that is not what occurred here. Hunt did not attempt to exculpate himself through his statements to Officer Darasua. To the contrary, they implicated him in a narcotics transaction if true or subjected him to criminal liability if false. Thus, viewed under the totality of the circumstances, Hunt’s statements provided Officer Darasua with probable cause to search Williams’s car because the circumstances discussed above corroborated these statements and established their reliability.³

The Impoundment of Williams’s Car did not Nullify the Automobile Exception for Warrantless Searches of Automobiles

Williams acknowledges that there is an automobile exception to the Fourth Amendment’s prohibition of warrantless searches (see e.g., *Maryland v. Dyson* (1999)

³ Williams also contends that in determining whether probable cause existed to search his car the court improperly considered that the drugs were found in the location indicated by Hunt, i.e., under the hood of Williams’s car. (*Florida v. J.L.*, *supra*, 529 U.S. at p. 271 [the reasonableness of official suspicion must be measured by what the officers knew before they conducted their search”].) He further contends that the specificity of Hunt’s statement, i.e., that Williams usually hid drugs in a hide-a-key, did not indicate that Hunt’s statements were reliable. We agree and do not consider these circumstances in concluding that the other circumstances discussed above provided probable cause for Officer Darasua to search Williams’s car.

527 U.S. 465, 466-467) which he asserts is based on the inherent mobility of vehicles and the impracticality of obtaining a warrant before the vehicle is moved. He contends, without any supporting authority, that this exception should not apply here because his car was being impounded and not capable of being moved. We disagree.

“Even if it is assumed that there was no probable cause to believe the vehicle contained evidence related to the reasons for which it was impounded, a warrantless search would nevertheless be permissible if after the automobile was impounded the police officers became aware of facts which gave rise to probable cause to search for evidence connected to an ‘unrelated’ offense. . . . Once there is probable cause to search such an item, for constitutional purposes there is ‘no difference between on the one hand . . . holding the car before presenting the probable cause issue to a magistrate and on the other hand carrying out an immediate search without a warrant.’ [Citation.] This rationale does not turn on whether the probable cause to search arose before or after the automobile is impounded. Rather, it is only necessary that there be probable cause to search at the time the vehicle is searched.” (*People v. Hill* (1974) 12 Cal.3d 731, 752-753, fns. omitted, overruled on another point in *People v. DeVaughn* (1977) 18 Cal.3d 889, 896, fn. 5.)

In accord with *Hill*, we reject Williams’s contention that the search of his car was not legal because his car was going to be impounded. Thus, we conclude that the court did not err when it denied Williams’s motion to suppress.

DISPOSITION

The judgment is affirmed.